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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JIMMY LARRY VILLEGAS, Defendant and Appellant.	H042250 (San Benito County Super. Ct. Nos. CR0701024, CR0601723, CR0700752, CR4381)

Defendant Jimmy Larry Villegas received an aggregate prison sentence of 11 years after pleading no contest to felony and misdemeanor charges in three criminal cases. Villegas later petitioned under the resentencing provision of Proposition 47, the Safe Neighborhoods and Schools Act, for his qualifying felony convictions to be recalled and resentenced as misdemeanors. The trial court granted the petition as to one felony conviction for petty theft with a prior conviction (Pen. Code, § 666),[1] and dismissed enhancements associated with that count. The court resentenced Villegas to the same aggregate term of 11 years by ordering consecutive terms on two felony counts that were not affected by Proposition 47 and that previously had been sentenced concurrently.

On appeal, Villegas contends that the trial court was not authorized to resentence him on those counts not subject to Proposition 47 or to impose consecutive terms. We find no error and affirm.

[1] Unspecified statutory references are to the Penal Code.

BACKGROUND

The factual circumstances of Villegas's offenses are not reflected in the record. Accordingly, we summarize only the procedural history pertinent to Villegas's claim of unauthorized resentencing under Proposition 47.

I. CHARGES

CR-06-01723 (*Case No. 1723*)

In October 2006, the San Benito County District Attorney filed a complaint charging Villegas with felony petty theft with a prior conviction (§ 666; count 1), misdemeanor being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 2), and misdemeanor possession of drug paraphernalia (*id.*, § 11364; count 3). As to the felony count, the complaint alleged two one-year sentencing enhancements for prior prison terms (§ 667.5, subd. (b)). Villegas pleaded no contest to all of the charges and admitted the enhancements pursuant to a plea agreement in February 2007 for an indicated sentence of suspended execution of an upper-term prison sentence and placement on felony probation. Villegas failed to appear at his sentencing and an arrest warrant was issued.

CR-07-00752 (*Case No. 752*)

In December 2007, the San Benito County District Attorney filed an amended information charging Villegas with felony evasion of a police officer (Veh. Code, § 2800.2, subd. (a); count 1) and misdemeanor obstruction of a police officer (§ 148, subd. (a)(1); count 2). The information alleged that Villegas committed the felony offense while on bail (§ 12022.1) for his conviction in case No. 1723 for felony petty theft with a prior conviction, that he had two prior convictions that qualified as strikes under the Three Strikes Law (§ 667, subds. (b)-(i)), and that he had served six prior prison terms (§ 667.5, subd. (b)).

CR-07-01024 (*Case No. 1024*)

Also in December 2007, the San Benito County District Attorney filed an amended information charging Villegas with felony evasion of a police officer (Veh. Code, § 2800.2, subd. (a); count 1), felony forgery (§ 475, subd. (b); count 2), misdemeanor leaving the scene of an accident (Veh. Code, § 20001, subd. (a); count 3), misdemeanor obstruction of a police officer (§ 148, subd. (a)(1); count 4), misdemeanor unlawful intercept of police radio communication (§ 636.5; count 5), and misdemeanor petty theft (§ 484e, subd. (c); count 6). Like in case No. 752, the information alleged as to the felony counts that Villegas committed the offenses while on bail (§ 12022.1) for his felony petty theft with a prior conviction in case No. 1723, and alleged two prior strike convictions (§ 667, subds. (b)-(i)) and six prior prison terms (§ 667.5, subd. (b)).

II. PLEA AND SENTENCING

Consolidated Plea Agreement

Villegas entered into a negotiated disposition in March 2008 for all three cases.[2] The court did not enter a new plea in case No. 1723 but referenced Villegas's earlier pleas of no contest to felony petty theft with a prior conviction (§ 666) and no contest to two misdemeanor drug-related counts, and his admission to a prison prior. In case No. 752, Villegas pleaded no contest to both charges and admitted the on-bail enhancement, one strike prior, and three prison priors. In case No. 1024, Villegas pleaded no contest to all charges and admitted, as to both felony counts, the on-bail enhancements, one strike prior, and three prison priors.

The trial court explained that it intended to impose an 11-year sentence under the agreement, whereas Villegas's total sentencing exposure was 19 years four months.

[2] Two additional cases that are not the subject of this appeal were also part of the negotiated disposition.

Sentencing

On April 2, 2008, the trial court imposed the 11-year aggregate sentence. The court selected count 1 in case No. 1024 (felony evasion of a police officer) for the principal term, for which the court imposed the upper term of three years, doubled to six years due to the admitted strike prior, plus the midterm of two years on count 2,[3] to run concurrent to count 1, plus five years in enhancements consisting of three one-year prison priors (§ 667.5, subd. (b)) and two one-year on-bail enhancements (§ 12022.1), for a total of 11 years.

In the other two cases, the court imposed concurrent sentences to the term in case No. 1024, consisting in case No. 1723 of the upper term of three years on count 1 (petty theft with a prior conviction), plus one year in county jail on count 2 and 180 days in county jail on count 3 (the misdemeanor drug-related counts), and in case No. 752, consisting of the upper term of three years on count 1 (felony evasion of a police officer), doubled by the strike prior, plus a two-year on-bail enhancement and three one-year terms for each prison prior.

III. RESENTENCING AFTER PROPOSITION 47 RELIEF WAS GRANTED

Beginning in December 2014, Villegas filed multiple requests pursuant to the newly-enacted resentencing provision of Proposition 47 (§ 1170.18) for resentencing in

[3] The People point out that the trial court should have imposed one-third the midterm rather than the full two-year term. However, the provision that the People reference applies only to consecutive sentences. (§ 1170.1, subd. (a) [when a person is convicted of two or more felonies and sentenced to consecutive terms, "[t]he subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed"]; *People v. Thompson* (2009) 177 Cal.App.4th 1424, 1432 [" 'Because concurrent terms are not part of the principal and subordinate term computation under section 1170.1, subdivision (a), they are imposed at the full base term, not according to the one-third middle term formula . . . .' "], overruled on other grounds by *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 888.)

his various cases. On February 4, 2015, the trial court determined that Villegas was eligible for relief in case No. 1723 and reduced the felony conviction for petty theft with a prior conviction (§ 666) to a misdemeanor. The court later struck and dismissed the on-bail enhancements in case Nos. 1024 and 752 (§ 12022.1) based on the reduction of the underlying felony to a misdemeanor.[4]

At the resentencing hearing, the court considered written and oral argument by the parties debating resentencing options on the remaining felony charges. The court reasoned that aside from the express requirement "that the new sentence is not to exceed the original sentence that was imposed on the defendant" (§ 1170.18, subd. (e)), the stated intent of Proposition 47 is "to decriminalize these certain types of theft crimes and/or the drug possession charges but not to reduce the time further that a defendant potentially would serve for unrelated felonies . . . ." Over the objection of defense counsel, the court resentenced Villegas on March 20, 2015, by imposing consecutive terms where it had previously imposed concurrent terms, resulting in "no net change in the sentence."

To arrive at this result, the court again chose count 1 in case No. 1024 for the principal term and imposed the upper term of three years, doubled to six years because of the admitted strike prior, plus one third the midterm of eight months on count 2, doubled to 16 months because of the strike prior, plus three one-year terms for the admitted prison priors, for a total of 10 years four months. In case No. 752, the court imposed one-third

[4] The trial court struck the enhancements over the objection of the prosecutor who argued the enhancements punished recidivism and should not be affected by a change in law to the underlying felony. The People assert that they have not waived the issue, which is currently under review by the California Supreme Court in another case. (See *People v. Buycks*, review granted Jan. 20, 2016, S231765 [identifying the issue before the court: "Was defendant eligible for resentencing on the penalty enhancement for committing a new felony while released on bail on a drug offense even though the superior court had reclassified the conviction for the drug offense as a misdemeanor under the provisions of Proposition 47?"].)

the midterm of eight months on count 1, to be served consecutive to the sentence in case No. 1024, for an aggregate term of 11 years. In case No. 1723, given the reduction of the felony count to a misdemeanor, the court imposed a one-year county jail term on count 1 to be served concurrent with the sentences in case Nos. 1024 and 752. The court also adjusted the restitution fines in the three cases and ordered that credit for time served in case No. 1723 be applied to the remaining sentence in the other cases.

Villegas filed this timely appeal.[5]

DISCUSSION

Voter-adopted Proposition 47 reclassified specified drug and theft offenses as misdemeanors and created a resentencing mechanism, codified at section 1170.18, under which eligible persons convicted of those offenses can petition the trial court to recall their sentences. (§ 1170.18; *People v. McDowell* (2016) 2 Cal.App.5th 978, 981 (*McDowell*).) A petitioner who satisfies the criteria for recall of his or her felony sentence may be resentenced to a misdemeanor according to the appropriate statutory provision, subject to a determination by the court that resentencing the petitioner does not "pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) "Under no circumstances may resentencing under [section 1170.18] result in the imposition of a term longer than the original sentence." (*Id.*, subd. (e).)

[5] In addition to the three cases discussed herein, Villegas's opening brief recites the procedural history of a fourth case, case No. CR-4381, for which he also filed a notice of appeal. In that case, the court denied without prejudice Villegas's petition pursuant to section 1170.18 to reduce two convictions from 1994 for receiving stolen property (§ 496) to misdemeanors, finding that Villegas did not provide evidence that the value of the property was less than $950. Insofar as Villegas has not raised any contentions on appeal related to case No. CR-4381, we find that any issues specific to that case have been waived. (See *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [parties' failure to make a coherent argument or cite any authority to support their contention "constitutes a waiver of the issue on appeal"].)

Villegas contends that the trial court's resentencing decision was unauthorized because the court had no jurisdiction to resentence him on felonies not enumerated in Proposition 47. He argues that while the court properly granted the petition as to his conviction for petty theft with a prior conviction (§ 666) and resentenced that count accordingly, the court improperly resentenced Villegas to revised consecutive terms on his felony convictions for evading a police officer (Veh. Code, § 2800.2, subd. (a)) and forgery (§ 475, subd. (b))—neither of which was subject to Proposition 47. The "judgments in those cases" (case Nos. 752 & 1024), he urges, "were final." Citing *Doe v. Harris* (2013) 57 Cal.4th 64 (*Doe*), Villegas argues that a trial court lacks authority to sua sponte reopen final judgments even if a count aggregated with others for plea and sentencing was modified by a change in law.

Several recent appellate decisions reveal the flaws in Villegas's arguments and demonstrate that his reliance on *Doe* is misplaced.

In *People v. Cortez* (2016) 3 Cal.App.5th 308 (*Cortez*), the Fourth District addressed resentencing of misdemeanor convictions under Proposition 47 and concluded that the trial court had authority under section 1170.18 to resentence the defendant to a consecutive rather than concurrent term, so long as the new aggregate sentence did not exceed the original. (*Cortez*, *supra*, at p. 310.) There, following a plea agreement and probation violations, the defendant received the low term of 16 months in prison on one felony drug possession count and concurrent terms of six months in jail on two misdemeanor drug-related counts. (*Id*. at pp. 310-311.) The defendant successfully petitioned to redesignate the felony count to a misdemeanor under Proposition 47. (*Id*. at p. 311.) The court resentenced the defendant to 364 days in county jail on the redesignated count, plus 129 days *consecutive* in county jail and 129 days *concurrent* in county jail on the remaining misdemeanor counts, for a total jail term of 493 days—five days more than the original sentence. (*Id*. at pp. 311, 317.)

The defendant argued on appeal that the trial court lacked jurisdiction to resentence him on the two misdemeanor counts and had no authority to resentence one count consecutive to the redesignated count when it originally was sentenced concurrent. (*Cortez*, *supra*, 3 Cal.App.5th at p. 311.) The *Cortez* court determined that the trial court had jurisdiction to resentence the misdemeanor counts but found that it had erred to the extent that the new sentence exceeded the original aggregate sentence. (*Id*. at p. 317.) *Cortez* addressed the jurisdictional argument by examining the general common law rule that " 'a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced.' " (*Id*. at p. 313, quoting *People v. Karaman* (1992) 4 Cal.4th 335, 344.) Because section 1170.18 "specifically authorizes a petition to recall a felony sentence and issue a new sentence," the trial court "*regained* jurisdiction over the res of the action through the Proposition 47 petition." (*Cortez*, *supra*, at p. 314; see also *People v. Vasquez* (2016) 247 Cal.App.4th 513, 519 (*Vasquez*) [explaining that § 1170.18 "provides a narrow exception to the general common law rule" regarding lack of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced].) *Cortez* thus clarified that the question presented was not one of jurisdiction but of "the authorized scope of resentencing under section 1170.18." (*Cortez*, *supra*, at p. 314.)

Applying the rules of statutory interpretation to section 1170.18, *Cortez* rejected the argument that "the court is only authorized to alter the portion of the aggregate sentence attributable to the felony subject to Proposition 47." (*Cortez*, *supra*, 3 Cal.App.5th at p. 314.) Instead, the court concluded that a petitioner "serving any portion of a sentence that included a qualifying felony . . . falls within the scope of [section 1170.18,] subdivision (a)," at which point the petitioner may properly "petition for a 'recall of sentence'—i.e., the entire aggregate sentence." (*Id*. at p. 315.) The court found this interpretation consistent with language in the statute signaling that "resentencing is supposed to occur as if Proposition 47 had already passed at the time of

the original sentencing." (*Ibid*.; § 1170.18, subd. (a).) The trial court had "broad discretion" to adjust the sentence on the misdemeanor counts "in light of the comparatively shorter punishment for the former felony count so that the aggregate sentence reflected the seriousness of the criminal conduct." (*Cortez*, *supra*, at p. 315.) *Cortez* deemed this discretion analogous to the court's "discretion to revisit all sentencing decisions when a principal felony term is reversed on appeal." (*Id*. at p. 316, citing *People v*. *Roach* (2016) 247 Cal.App.4th 178, 185 (*Roach*).)

Villegas's proposed interpretation of section 1170.18 would constrain the trial court's resentencing authority under Proposition 47 to a portion of the aggregate sentence. Villegas essentially argues that a trial court regains jurisdiction under Proposition 47 to resentence a defendant in the aggregate only if the *principal term* is affected by redesignation, or in the analogous context of a reversal on appeal, if the principal term is invalidated or the appellate court remands with directions specifically authorizing the trial court to resentence the aggregate term.

For the reasons articulated in *Cortez*, we are not persuaded. "A successful petition under section 1170.18 vests the trial court with jurisdiction to resentence the applicant, and in doing so the court is required to follow the generally applicable sentencing procedures in section 1170 et seq." (*Roach*, *supra*, 247 Cal.App.4th at p. 184.) While section 1170.18 may provide "a narrow exception to the general common law rule" that the trial court " 'loses jurisdiction over [a] defendant' " once it " 'relinquishes custody' " (*Vasquez*, *supra*, 247 Cal.App.4th at p. 519), nothing in the statutory text suggests that the exception is restricted depending on the composition of the aggregate sentence. By its plain language, section 1170.18 allows a person currently serving a sentence for a qualifying conviction to "petition for a *recall of sentence* before the trial court that entered the judgment of conviction in his or her case to request resentencing . . . ." (§ 1170.18, subd. (a), italics added.) At the time of resentencing, the trial court is prohibited from imposing "a term longer than *the original sentence*." (*Id*., subd. (e),

italics added.) Just as the trial court was authorized to consider "the entire aggregate sentence" in *Cortez*, including those misdemeanor convictions not affected by Proposition 47 (*Cortez, supra,* 3 Cal.App.5th at p. 315), the court had jurisdiction to resentence Villegas by considering the original aggregate sentence.[6]

Also helpful to our discussion is *McDowell, supra,* 2 Cal.App.5th 978, in which the Second District affirmed a judgment resentencing the defendant under Proposition 47 "to an overall prison term the same length as his previous, plea-bargained sentence after the trial court" reduced two of his convictions to misdemeanors. (*Id*. at p. 980.) In that case, the defendant received a 10-year sentence after accepting a plea bargain comprised of six felony burglary counts, each with an admitted on-bail enhancement, and one prior strike under the Three Strikes law, which sentence was to run consecutively to a four-year sentence imposed in the out-on-bail case. (*Ibid*.) Two of the burglary convictions and the felony underlying the principal term imposed in the other case were reduced to misdemeanors under Proposition 47, requiring the trial court upon resentencing to select a new principal term. (*Ibid*.) The trial court resentenced the defendant to the same 10-year term by imposing the high term for the new principal offense. (*Id*. at p. 981.)

On appeal, the defendant in *McDowell* argued that under *Doe, supra,* 57 Cal.4th 64, the terms of his plea bargain were subject to later changes in the law like Proposition 47, thereby requiring a reduction in the total sentence, and the trial court abused its discretion by imposing the high term for the principal offense. (*McDowell, supra,* 2 Cal.App.5th at p. 981.) The court rejected both arguments. Like in *Cortez,* the

[6] Because we find that section 1170.18 vested the trial court with authority to resentence Villegas in the aggregate, Villegas's argument that the time had passed for recall of sentence under section 1170, subdivision (d)(1) (authorizing sentencing court to sua sponte recall a prison or jail sentence within 120 days of the date of commitment and resentence the defendant "as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence") has no bearing here.

court noted that the granting of a section 1170.18 petition vested the trial court with jurisdiction to resentence the defendant. (*McDowell*, *supra*, at p. 981.) Since the sentence included principal and subordinate terms, the court found that resentencing under Proposition 47 must comport with "the generally applicable sentencing procedures found in section 1170 et seq.," (*ibid*.) under which "the judgment, or aggregate determinate term, is viewed as intertwined pieces consisting of a principal term and one or more subordinate terms." (*Id*. at p. 982, citing *People v. Sellner* (2015) 240 Cal.App.4th 699, 701 (*Sellner*).) *McDowell* also concluded that the trial court did not improperly rely on the term of the plea agreement but had discretion to impose the high term on the new principal count based on the seriousness of the defendant's criminal history. (*McDowell*, *supra*, at p. 983.)

Like in *McDowell*, Villegas pleaded to multiple felonies and admitted numerous enhancements. His aggregate sentence reflected these convictions and admissions. In our determinate sentencing scheme, "it is not at all uncommon for a trial court to impose an aggregate sentence intended as appropriate total punishment under all of the circumstances . . . ." (*People v. Savala* (1983) 147 Cal.App.3d 63, 66 (*Savala*), disapproved on other grounds in *People v. Foley* (1985) 170 Cal.App.3d 1039, 1046.) Villegas in fact acknowledges that " ' "the components of an aggravated term are properly viewed as interdependent when calculating and imposing sentence, and an aggregate term of imprisonment under the determinate sentencing law constitutes a total prison term which is 'a single term rather than a series of separate terms.' " ' " (*People v. Castaneda* (1999) 75 Cal.App.4th 611, 613, quoting *People v. Kelly* (1999) 72 Cal.App.4th 842, 846; *People v. Begnaud* (1991) 235 Cal.App.3d 1548, 1557; *People v. Stevens* (1988) 205 Cal.App.3d 1452; *Savala*, *supra*, at pp. 68-69.)

Whether the conviction underlying the principal term of Villegas's sentence was directly affected by the section 1170.18 petition does not determine the scope of the trial court's authority under Proposition 47 to resentence in accordance with "the generally

applicable sentencing procedures found in section 1170 et seq." (*McDowell*, *supra*, 2 Cal.App.5th at p. 981; *Sellner*, *supra*, 240 Cal.App.4th at p. 701; see also *Roach*, *supra*, 247 Cal.App.4th at p. 184.) This is particularly true considering the trial court dismissed Villegas's on-bail enhancements in case Nos. 725 and 1024 when it reduced the felony conviction in case No. 1723 to a misdemeanor, bringing these cases—and the entire aggregate sentence—squarely in play upon resentencing.

Villegas's reliance on the California Supreme Court's decision in *Doe*, *supra*, 57 Cal.4th 64, is misplaced. *Doe* addressed whether retroactive application of public disclosure requirements in the sex offender registration laws had violated the terms of the defendant's plea agreement, which at the time of the plea did not contemplate public disclosure of such personally identifying information. (*Doe*, *supra*, 57 Cal.4th at pp. 66-67.) The Supreme Court concluded that requiring the defendant to comply with the changes in the law did not violate the terms of his plea agreement because "the general rule in California is that plea agreements are deemed to incorporate the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy." (*Id*. at p. 71.)

Our Supreme Court recently confirmed *Doe*'s application to plea agreements in the context of Proposition 47 in *Harris v. Superior Court* (2016) __ Cal.5th __ [2016 Cal. LEXIS 9040] (*Harris*). There the defendant pleaded to a felony grand theft charge and admitted a prior robbery conviction in exchange for a six-year prison sentence and dismissal of a robbery charge. In response to the defendant's petition for recall and resentencing as a misdemeanant under Proposition 47, the People sought to rescind the plea and reinstate the original robbery charge. (*Id.* at p. __ [at *2].) The court applied *Doe* in determining that a petition for relief under Proposition 47 does not entitle the People to have the defendant's plea agreement set aside. (*Ibid.*) The court noted that the only exception to the resentencing process under section 1170.18, as it applies to eligible defendants, is "the 'safety valve' to protect the public; the statute provides no other safety

valve such as rescinding a plea bargain." (*Harris*, *supra*, at p. __ [at *12].) The court further explained that the resentencing process "would often prove meaningless if the prosecution could respond to a successful resentencing petition by withdrawing from an underlying plea agreement and reinstating the original charges filed against the petitioner." (*Ibid.*)

We find that *Doe*, and more recently *Harris*, are not helpful to Villegas insofar as they concern the impact of later changes in the law to the plea agreement, not the court's authority—consistent with the later changes in the law—to resentence on the plea agreement. Whereas section 1170.18 provides no basis for rescinding a plea agreement (*Harris*, *supra*, at p. __ [2016 Cal. LEXIS 9040 at *12]), it provides a clear basis for resentencing a petitioner under Proposition 47. As *Harris* explained, "entering into a plea agreement does not insulate the parties 'from changes in the law that *the Legislature has intended to apply to them*.' " (*Id*. at p. __ [at *11].) Following the analysis in *Harris*, we find nothing to constrain the trial court's scope of resentencing authority under section 1170.18 (other than prohibiting imposition of a term longer than the original sentence as stated in section 1170.18, subdivision (e)).

We moreover agree with recent decisions that have examined a trial court's discretion to resentence aggregated counts in other analogous circumstances. In *Roach*, *supra*, 247 Cal.App.4th 178, the trial court resentenced the defendant under section 1170.18 to the same aggregate term as originally imposed after having reduced two of the defendant's convictions to misdemeanors. (*Roach*, *supra*, at p. 180.) Like in *McDowell*, one of the convictions subject to reduction served as the basis for the principal term, necessitating selection of a new principal term. (*Id*. at p. 182.) After determining the statutory basis for the trial court's resentencing jurisdiction, the court drew "some guidance" from cases where a principal felony term is reversed on appeal and the case remanded for resentencing. (*Id*. at p. 185.) In that context, *Roach* noted that trial courts may reconsider all aspects of the aggregate sentence and "may impose an

aggregate term of the same length as the original term, by selecting a different principal term and modifying the sentences imposed on other convictions." (*Ibid*., citing *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1256 (*Burbine*); accord *People v. Navarro* (2007) 40 Cal.4th 668, 681 (*Navarro*); see also *McDowell*, *supra*, 2 Cal.App.5th at p. 982 ["Upon remand for resentencing following a reversal, a trial court may, but need not, impose a combined term that equals the original sentence."].)

This court recently issued a decision in agreement with *Roach*. In *In re Guiomar* (2016) __ Cal.App.5th __ [2016 Cal.App. LEXIS 962], a panel of this court explained that "when an aggregate sentence includes convictions 'falling within the purview' of Proposition 47 (§ 1170.18, subd. (n)) as well as convictions not affected by Proposition 47, the trial court has jurisdiction to resentence on all of the convictions under section 1170.1, subdivision (a)." (*Id*. at pp. __ [at *11-12].) Like in the present case, the granting of the Proposition 47 petition in *Guiomar* did not affect the principal term; nevertheless, the court determined that the trial court's jurisdiction to resentence extended to those convictions not affected by Proposition 47. (*Ibid.*)

We therefore conclude that the trial court's discretion to consider the entire sentencing scheme upon resentencing is not limited to cases involving reversal or misdemeanor reduction of the felony conviction underlying the principal term. "Rather, the court is entitled to revisit sentencing decisions that have nothing to do with [selecting new principal and subordinate terms under] section 1170.1, subdivision (a). The court may, for example, impose an upper-term punishment when the middle term had previously been imposed. ([*Burbine*, *supra*, 106 Cal.App.4th at pp. 1256-1257].) A court may also impose a previously stayed sentence. (*People v. Calderon* (1993) 20 Cal.App.4th 82, 87-88.) And . . . a court may choose to run counts consecutively that were previously run concurrently. (*People v. Hill* (1986) 185 Cal.App.3d 831, 836.)" (*Cortez*, *supra*, 3 Cal.App.5th at p. 316.) Likewise under Proposition 36 (the Three Strikes Reform Act of 2012), at least one court has deemed a timely petition for recall of

an indeterminate life sentence "akin to a 'recall' of sentence under section 1170, subdivision (d)" such that the trial court may exercise "discretion to reconsider all other aspects of the sentence." (*People v. Garner* (2016) 244 Cal.App.4th 1113, 1118 (*Garner*).)

The relevant premise of these cases is that the trial court's jurisdiction over an aggregate sentence is not limited to "only over that portion of the original sentence pertaining to the count that was reversed" (*Burbine*, *supra*, 106 Cal.App.4th at p. 1257) but extends to the entire sentence based on "the inherently integrated nature of a felony sentence under the current statutory scheme." (*Id.* at p. 1258.) As stated in *Cortez*, "[t]he reason courts are entitled to revisit sentencing decisions beyond merely selecting a new principal term in accordance with section 1170.1, subdivision (a), is that the aggregate length of a term matters." (*Cortez*, *supra*, 3 Cal.App.5th at p. 316.) " 'A judge's subjective determination of the value of a case and the appropriate aggregate sentence, based on the judge's experiences with prior cases and the record in the defendant's case, cannot be ignored. A judge's subjective belief regarding the length of the sentence to be imposed is not improper as long as it is channeled by the guided discretion outlined in the myriad of statutory sentencing criteria.' " (*Id.* at p. 317, quoting *People v. Stevens*, *supra*, 205 Cal.App.3d at p. 1457.)

The California Supreme Court in *Navarro*, *supra*, 40 Cal.4th 668, alluded to this purpose in directing the appellate court, upon remand, to strike an unauthorized modification to one count of a multi-count conviction and to remand to the trial court for resentencing: "Although the Court of Appeal's prior remand order was for resentencing 'on the modified convictions only,' we believe a remand for a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances." (*Id.* at p. 681, citing *Burbine*, *supra*, 106 Cal.App.4th at p. 1259; see also *Garner*, *supra*, 244 Cal.App.4th at p. 1118 ["By filing his Proposition 36 petition, defendant expressed a desire to receive less than a life sentence,

undermining the basis for the trial court's prior exercise of lenity. He cannot do that and at the same time prevent the trial court from exercising discretion to reconsider all other aspects of the sentence."].)

The rationale expressed in these opinions for allowing the trial court to resentence all aspects of an aggregate sentence applies here. Villegas petitioned under Proposition 47 for redesignation of his felony conviction in case No. 1723 (petty theft with a prior conviction; § 666) and dismissal of the related on-bail enhancements (§ 12022.1) in case Nos. 725 and 1024. His successful petition afforded him relief on those component terms of his aggregate sentence and vested the trial court with jurisdiction to resentence him in a manner consistent with "the generally applicable sentencing procedures in section 1170 et seq." (*Roach*, *supra*, 247 Cal.App.4th at p. 184) and in relation to his "entire sentence, not merely the portion attributed to the qualifying felony." (*Cortez*, *supra*, 3 Cal.App.5th at p. 316.)

Villegas contends that the trial court improperly increased his punishment for evading a police officer (Veh. Code, § 2800.2, subd. (a)) and forgery (§ 475, subd. (b)) by imposing consecutive terms. This myopic view ignores the aggregate nature of his sentence. (See *Sellner*, *supra*, 240 Cal.App.4th at p. 702 [the appellant's contention that she "has been subjected to a sentence greater than originally imposed" would be correct "[w]ere one to put horse blinders on and view only the sentence" in one case as opposed to the aggregate sentence in both cases]; cf. *Cortez*, *supra*, 3 Cal.App.5th at p. 317 [trial court erred in resentencing misdemeanor counts consecutively that it previously had imposed concurrently only to the extent that the new sentence exceeded the original aggregate sentence by five days].)

Villegas cites *People v. Ali* (1967) 66 Cal.2d 277, 281 in support of this argument, but in that case the Supreme Court concluded that "[w]here a defendant has been sentenced to concurrent terms and then upon a retrial is sentenced to consecutive terms for the same offenses, his punishment has been increased by indirect means." This is not

a situation where a defendant "risk[s] being given greater punishment . . . for the privilege of exercising his right to appeal." (*Ibid.*) Rather, the trial court resentenced Villegas as required after granting his petition under Proposition 47 and exercised its discretion to impose an aggregate term of the same length as before based on the court's assessment that it was not required to reduce the defendant's term for felony convictions that were not subject to Proposition 47. Because this did not "result in the imposition of a term longer than the original sentence" (§ 1170.18, subd. (e)), we find that the court acted within the scope of its resentencing authority under section 1170.18.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Grover, J.

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